



OHIO STATE BOARD OF PHARMACY

65 S. FRONT STREET, ROOM 504
COLUMBUS, OHIO 43215
TELEPHONE: 614/466-4143

THE STATE BOARD OF PHARMACY

VS

KENNETH O. LEE, R.Ph.

THE MATTER OF KENNETH O. LEE, DOCKET NO. 6-182-2, CAME ON FOR CONSIDERATION BY THE STATE BOARD OF PHARMACY ON FRIDAY, JUNE 27, 1986 AS A RESULT OF THE REPORT AND RECOMMENDATION SUBMITTED TO THE BOARD BY HEARING OFFICER AND BOARD MEMBER THOMAS WOEBKENBERG. MOTIONS WERE MADE AND RECORDED THE FOLLOWING ORDER BE ADOPTED:

ORDER

Findings Of Fact

The State Board of Pharmacy hereby agrees with and adopts the Findings Of Fact set forth in the Report and Recommendation of Hearing Officer and Board Member Thomas Woebkenberg, as follows:

- (1) Kenneth O. Lee, as the responsible pharmacist pursuant to Section 4729.55 of the Revised Code and the pharmacist in full and actual charge pursuant to Ohio Revised Code Section 4729.27 for Town Pharmacy, is responsible for compliance with all state and federal laws regulating the distribution of drugs and the practice of pharmacy.
- (2) Town Pharmacy, between the dates of February 22, 1985 through May 21, 1985, did receive in commerce misbranded drugs, hold and offer for sale, and sell misbranded drugs, to wit: misbranded drugs were purchased on at least four different occasions from Tri-State Pharmaceuticals, Inc., 625 N. Wayne, Cincinnati, Ohio, in plastic prescription vials and were dispensed to patients pursuant to written or oral prescriptions. Such conduct is in violation of Ohio Revised Code Section 3715.64(A) and is prohibited by Section 3715.52 of the Ohio Revised Code.
- (3) Town Pharmacy, between the dates of February 22, 1985 and March 11, 1985, did receive in commerce misbranded drugs, hold and offer for sale, and sell misbranded drugs, to wit: drugs were purchased on at least two different occasions from Tri-State Pharmaceutical, 625 Wayne, Cincinnati, Ohio, and were dispensed to patients pursuant to written or oral prescriptions. These drugs were misbranded; in that, they were labeled as "clinic packs" and/or as

"samples" and, therefore, were false and misleading when sold at retail. Such conduct is in violation of Ohio Revised Code Sections 3715.64(A) and 3719.81, and is prohibited by Sections 3715.52 and 2925.36 of the Ohio Revised Code.

- (4) Town Pharmacy, on or about October 17, 1985, did receive in commerce misbranded drugs, and hold and offer for sale misbranded drugs, to wit: Viskin-5mg was purchased from Tri-State Pharmaceutical, 625 N. Wayne, Cincinnati, Ohio, in plastic prescription vials to be dispensed to patients pursuant to written or oral prescriptions. Such conduct is in violation of Ohio Revised Code Section 3715.64(A) and is prohibited by Section 3715.52 of the Ohio Revised Code.
- (5) The Board of Pharmacy takes administrative notice of Divisions (J), (K), and (L) of Section 4729.02 of the Revised Code, which reads as follows:
 - (J) "Sale" and "sell" include delivery, transfer, barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as principal proprietor, agent, or employee.
 - (K) "Wholesale sale" and "sale at wholesale" means any sale in which the purpose of the purchaser is to resell the article purchased or received by the purchaser.
 - (L) "Retail sale" and "sale at retail" means any sale other than a wholesale sale or sale at wholesale.

Conclusions Of Law

The State Board of Pharmacy hereby agrees with and adopts the Conclusions Of Law set forth in the Report and Recommendation of Hearing Officer and Board Member Thomas Wuebkenberg, as follows:

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (2) through (4) of the Findings Of Fact constitutes dishonesty in the practice of pharmacy.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (2) through (4) of the Findings Of Fact constitutes willful violations of the provisions of Chapters 2925., 3715., and 3719. of the Revised Code.

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Order of the Board

Pursuant to Section 4729.16 of the Ohio Revised Code, and the foregoing Findings Of Fact and Conclusions Of Law set forth above, the State Board of Pharmacy hereby agrees with and adopts the recommendation for action set forth in the Report and Recommendation of Hearing Officer and Board Member Thomas Wuebkenberg. Therefore, the State Board of Pharmacy takes the following actions concerning the pharmacist license held by Kenneth O. Lee:

(A) On the basis of paragraph (1) of the Conclusions Of Law set forth above, the State Board of Pharmacy hereby suspends the pharmacist identification card held by Kenneth O. Lee for 24 months.

(B) On the basis of paragraph (2) of the Conclusions Of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of one thousand dollars (\$1,000.00), due and owing within thirty (30) days of the issuance of this Order. Said monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed to the State Board of Pharmacy, 65 S. Front Street, Room 504, Columbus, Ohio 43266-0320, with the enclosed form.

(C) Further, the Board suspends the suspension on condition that Kenneth O. Lee:

(1) does not violate the drug laws of the state of Ohio, any other state, or the federal government; and

(2) abides by the rules of the State Board of Pharmacy.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY.

MOTION CARRIED.

SO ORDERED.

It is hereby certified by this Board that the above language is a copy of the Order entered upon its journal in this case.

Section 119.12 of the Revised Code authorizes an appeal from this Order. Such an appeal may be taken to the court of common pleas in the county in which your place of business is located or to said court of the county in which you reside. If you do not have a place of business in Ohio and are not a resident of Ohio, you may appeal to the Court of Common Pleas in Franklin County, Ohio.

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Order of the Board

Such an appeal, setting forth the order appealed from and the grounds of the appeal, must be commenced by the filing of a Notice of Appeal with the State Board of Pharmacy and the appropriate court within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Revised Code.

BY ORDER OF THE STATE BOARD OF PHARMACY

CERTIFIED MAIL
Return Receipt

ORDER ISSUED: June 14, 1971

FZW/sb

By

Franklin Z. Wickham
Franklin Z. Wickham, Executive Director

cc: John E. Breen, Assistant Attorney General